

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 13-CVS-014472

MARY PALMER,

Plaintiff,

v.

NORTH CAROLINA DEPARTMENT OF
HEALTH & HUMAN SERVICES

Defendant.

**SETTLEMENT AGREEMENT AND
RELEASE OF ALL CLAIMS**

This Settlement Agreement, Waiver, and Release of All Claims (the "Agreement") is made and entered into between Mary Ann Palmer ("Palmer") and the North Carolina Department of Health and Human Services ("DHHS").

WITNESSETH

WHEREAS, Palmer was employed by DHHS for a period of employment from January 3, 2012 to August 29, 2012, when DHHS separated her prior to her achieving permanent status. At the time of her separation, Palmer was employed as a Facility Survey Consultant, RN. Her pay rate was \$50,960.00.

WHEREAS, disputes arose between Palmer and DHHS regarding the circumstances of Palmer's employment, and the termination of that employment.

WHEREAS, Palmer filed the instant case in the Wake County Superior Court. A settlement conference in reference to this case was held on July 29, 2014 before an approved mediator as selected by the parties.

WHEREAS, Palmer and DHHS now desire to settle completely and for all time all existing disputes between or among them regarding Palmer's employment with DHHS, including any and all conduct of the parties occurring prior to the execution of the Agreement.

NOW, THEREFORE, in consideration of the covenants and promises herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the following Agreement is entered into by the undersigned parties.

1. **No Admission.** This Agreement, and compliance with this Agreement shall not be construed as an admission on the part of DHHS of any violation of the rights or interests of Palmer or of any other individual or entity. Nor shall the Agreement or compliance with the Agreement be construed as an admission by DHHS of any violation of any order, ruling, law, statute, regulation, contract or covenant, express or implied, on the part of DHHS, including its current and/or former directors, supervisors, employees, agents, or representatives.

2. **Settlement Payment, Dismissal, and Re-Employment.** For and in consideration of the promises and covenants contained herein, Palmer and DHHS have agreed and do agree as follows:

(a) Palmer expressly agrees that she shall execute the Agreement, and, within five (5) business days of executing the Agreement, terminate and dismiss, with prejudice, the suit styled: Mary Palmer v. North Carolina Department of Health and Human Services, 13 CVS 14472, currently pending in the Wake County Superior Court. Palmer further agrees that her counsel, Charles E. Monteith, Jr., shall forward the executed Agreement to counsel for DHHS, Joseph E. Elder, Assistant Attorney General, who will obtain the execution by the appropriate agency representative(s). A fully executed Agreement will then be forwarded to Mr. Monteith. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(b) The DHHS agrees that within 30 business days of receipt of the fully executed and notarized Agreement from Palmer's counsel, it will deliver a copy of the Agreement which has been fully executed and notarized by its authorized representative, and make two payments totaling a gross amount of Thirty-Two Thousand Dollars and No Cents (\$32,000.00). ~~One check shall be made to Palmer in the amount of \$29,687.40, minus deductions for federal and state taxes, with said payment deliverable to Palmer at her counsel's office.~~ A separate payment will be made to the law firm of Monteith & Rice, PLLC, for attorney fees and costs in the amount of \$2,312.60, for which DHHS shall issue an IRS Form 1099.

(c) The DHHS agrees to change Palmer's termination to a voluntary resignation and agrees to remove all negative personnel actions, forms, memos, and correspondence from Palmer's personnel file. DHHS also agrees to provide Palmer with a neutral reference and will upon request release only information allowed by Chapter 126 of the North Carolina General Statutes concerning her employment.

(d) The payments described in subsection (b) constitute the full and complete settlement of any and all monetary and non-monetary claims between Palmer and DHHS,

including claims for wages, salary, benefits, commissions, compensatory, general, special and punitive damages, injunctive or equitable relief, attorney's fees, interest, expenses, and costs actually incurred. Except as otherwise stated in this Agreement, Palmer expressly waives any and all monetary and non-monetary claims between Palmer and DHHS, including claims for wages, salary, back pay, benefits, entitlements, commissions, compensatory, general, special and punitive damages, injunctive or equitable relief, attorney's fees, interest, expenses, and costs actually incurred.

3. Disavowal Of Any Further Or Additional Claims. Palmer agrees to withdraw, dismiss, and terminate, with prejudice, any and all pending charges, complaints, claims, grievances or other actions, including but not limited to the aforementioned case 13 cvs 14472 filed with the Wake County Superior Court, which are against or involve DHHS and which in any way relate to Palmer's employment relationship with DHHS, the termination of that employment relationship, the employment practices of DHHS, and/or any other conduct by DHHS occurring prior to the execution of the Agreement.

4. Waiver And Release.

(a) Except as stated herein, based upon the consideration recited above and the mutual releases granted herein, Palmer hereby waives, releases and forever discharges any claims, rights, liabilities or entitlements now existing or arising in the future which are against or involve DHHS and which relate to Palmer's employment relationship with DHHS, the termination of that employment relationship, the employment practices of DHHS, and/or any conduct of the parties occurring prior to the execution of the Agreement, including, but not limited to any contract claim, tort claim, claim for wages, salaries, commissions, bonuses, severance pay or fringe benefits, and any claim based upon any state or federal wage, employment or common law, or amendments thereto, including, but not limited to: (i) any claim arising under the North Carolina State Personnel Act, N.C. Gen. Stat. § 126-1, et seq.; (ii) any claim arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.; (iii) any claim arising under the North Carolina Wage and Hour Act, N.C. Gen. Stat. § 95-25.1, et seq.; (iv) any claim arising under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.; (v) any claim arising under the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq.; (vi) any claim arising under the North Carolina Persons with Disabilities Protection Act, N.C. Gen. Stat. § 168A-1, et seq.; (vii) any claim arising under, or predicated upon any other North Carolina or federal statute; and (viii) any claim arising under, or predicated upon North Carolina common law or federal common law.

(b) Palmer agrees not to institute or pursue any lawsuit, grievance, charge of discrimination, or proceeding in any forum that is in any way based upon or arising out of any matter involving Palmer and DHHS from the date of her employment through the execution of this Agreement; and further Palmer agrees to dismiss with prejudice and withdraw, in addition to what is described above, any other active lawsuits, charges of

discrimination, complaints, or other actions with any state or federal agency based upon the said matters.

5. Obligation For Attorney Fees and Costs To Date. DHHS will assume liability, if any exists, for its attorney fees and costs incurred in the defense of this matter. DHHS also agrees pay Palmer's attorney's fees as set forth in Paragraph 2(b). Further, DHHS shall pay the costs of the court ordered mediated settlement conference.

6. Construction Of Agreement. Palmer warrants that in agreeing to the terms of the Agreement, she has not relied in any way upon any representations or statements of DHHS regarding the subject matter hereof or the basis or effect of the Agreement other than those representations or statements contained herein. The Agreement shall be construed in accordance with North Carolina law. Palmer consents to the jurisdiction of the North Carolina courts over this matter.

7. Entire Agreement. It is understood and agreed that this Agreement expresses a full and complete settlement of any and all claims, the same having been denied, and regardless of the adequacy of the terms of this Agreement is intended to avoid any possible litigation, hearings, reviews, investigations, or controversies. This Agreement contains the entire agreement between DHHS and Palmer with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. In the event that one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable.

IN WITNESS WHEREOF, Palmer and DHHS have executed the Agreement on the day and year noted on the following pages.

[Remainder of this page intentionally left blank]

Dated: 12/6/14

Mary A. Palmer
Mary A. Palmer

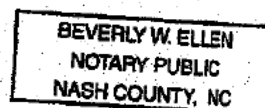
NORTH CAROLINA

Nash COUNTY

On this the 6 day of December, 2014, before me personally appeared Mary Palmer, to me known to be the person described herein, and who executed the foregoing instrument; and she acknowledged that she voluntarily executed this Agreement.

Beverly W. Ellen

Notary Public

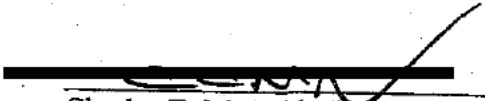


My commission Expires: 9-12-17

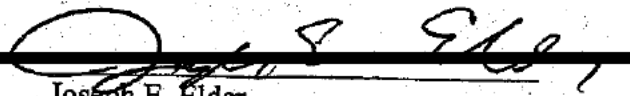
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ATTORNEYS:

Dated: 12-9-14


Charles E. Monteith, Jr.
Attorney for Mary Palmer

Dated: 12-11-14


Joseph E. Elder
Assistant Attorney General
Attorney for North Carolina Department
of Health and Human Services